

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of
HAWAIIAN ELECTRIC COMPANY, INC.

For Approval of Rate Increases and Revised
Rate Schedules and Rules.

DOCKET NO. 2008-0083

PUBLIC UTILITIES
COMMISSION

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FILED

MOTION TO INTERVENE AND BECOME A PARTY

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¹ A Motion to Appear before the Hawaii Public Utilities Commission was filed contemporaneously with this motion and is pending approval.

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MOTION TO INTERVENE AND BECOME A PARTY

Pursuant to Hawaii Administrative Rule ("HAR") sec. 6-61-55, this "Motion to Intervene and Become a Party" before the Public Utilities Commission of the State of Hawaii (Docket No. 2008-0083) is respectfully submitted by the Hawaii Commercial Energy Customer Group (the "Commercial Group"), by and through its attorneys. The current members of the Commercial Group are: Maui Divers of Hawaii, Limited; Safeway Inc.; Sam's West, Inc.; Step Three, Ltd., dba Sandal Tree; the Retail Merchants of Hawaii Inc.; and Wal-Mart Stores, Inc.

As grounds for said intervention, Commercial Group avers as follows:

1. Correspondence. All communication concerning this Application is to be addressed to:

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2. Movant. Movant's name and business address is as follows:

Hawaii Commercial Energy Customer Group
c/o Holly Rachel Smith, Esq.
Russell W. Ray, PLLC
6212-A Old Franconia Road
Alexandria, VA 22310

3. Nature of Proceeding. Hawaii Electric Company, Inc. ("HECO") seeks Commission approval of rate increases and revised rate schedules and rules, Docket No. 2008-0083.

4. Compliance with Applicable Rules. H.A.R. §6-61-55 requires that Movant satisfy nine criteria for granting the requested intervention. Paragraphs number five through thirteen, *infra*, set forth those nine criteria.

A motion to intervene in a public utility rate increase case shall be filed no later than ten days after the last public hearing held pursuant to the published notice of hearing.² The Commission has scheduled a public hearing in this matter for September 18, 2008. Thus, the Commercial Group's petition is timely filed.

5. Nature of Movant's Right to Participate. A person may make an application to intervene (H.A.R. §6-61-55(a)). The Commercial Group is "an organized group of persons," meeting the definition of person under H.A.R. §6-61-2. The Commercial Group has a significant interest in this proceeding because the group is comprised of multiple small medium and large sized commercial customers of HECO. The interests of commercial customers, such as the members of the Commercial Group, will not be adequately represented by other parties to the

² H.A.R. §6-61-57.

proceeding and as such, the Commercial Group request's that the Commission allow it to intervene in this proceeding with the full powers and rights granted by the Public Utility Commission,³ and by the Hawaii Administrative Procedure Act,⁴ to intervening parties.

The general rule with respect to intervention is that intervention as a party to a proceeding before the Commission is a matter of the sound discretion of the Commission.⁵ The Commission exercises this discretion under H.A.R. §6-61-55(d), "intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."

6. The nature and extent of the applicant's property, financial and other interests in the pending matter. The Commercial Group, comprised of commercial customers with collectively over 56 facilities in HECO's service territory. These facilities include grocery stores, department stores, discount stores, specialty stores and wholesale clubs. The Commercial Group relies on HECO to supply more than 67,950,000 kWh/year of energy.

7. The effects of the pending order as to the applicant's interest. HECO proposes to significantly increase these electricity rates. Inasmuch as the issues in this docket directly affect the rate schedules under which members of the Commercial Group purchase energy, HECO's request for a rate increase could dramatically impact the Commercial Group's collective cost of energy. Accordingly, this docket will directly and substantially affect the operating expenses of the members of the Commercial Group through rate impacts.

8. The other means available whereby applicant's interest may be protected. Absent each member intervening separately, the Commercial Group is not aware of any other means by

³ H.A.R. Title 6, Chapter 61.

⁴ H.R.S. Title 8, Chapter 91.

⁵ *In re Hawaiian Electric Co.*, 56 HAW, 260, 262, 535 P.2d 1102(1975); see also *RE Maui Electric Co.*, Docket No. 7000, Decision and Order No. 116668(June 5, 1992) at 8.

which its interest may be represented and protected other than its direct involvement in this proceeding.

9. The extent to which the applicant's interest will not be represented by existing parties.

The existing parties are HECO and the Consumer Advocate. The Department of Defense has requested intervention, however, the Commission has yet to rule on the Department's request.

For a number of reasons, none of the other parties and anticipated participants can represent the Commercial Group's interests. The Consumer Advocate is required to "represent, protect, and advance the interest of all consumers." However, in some cases, the Consumer Advocate, in considering the interests of all HECO's ratepayers, may not necessarily be able to advance the interests of individual large customers, such as the members of the Commercial Group.⁶ This is the case especially with regard to cost allocation and rate design, which are issues in this case that are extremely important to the Commercial Group.

HECO's interests are in direct contrast to the Commercial Group's inasmuch as HECO seeks to increase the rates its customers, including the members of the Commercial Group, would be required to pay. The Department of Defense, as a governmental entity, has distinctly different interests from the Commercial Group, comprised of commercial entities. Thus, the Commercial Group's interests will not be adequately represented by other participants in this docket.

10. The extent to which the applicant's participation can assist in the development of a sound record. The Commercial Group believes that its participation will enhance the development of a sound record regarding the justness and reasonableness of HECO's proposed rate increase and rate design. The resources and expertise that the Commercial Group brings to

⁶ See *In re Hawaiian Electric Company, Inc.*, Docket No 4-0113, Consumer Advocate's Memorandum in Support of the Department of Defense's Motion to Intervene (filed Jan. 26, 2005) at p. 3.

this docket will assist in creating a record representing more diverse points of views that will enable and support a well-reasoned decision. The members of the Commercial Group are some of the largest private consumers of energy in the United States, and take service from over 3,275 electric, natural gas, and water utilities. The members of the Commercial Group have energy departments that work in all facets of energy and utility management. The regulatory teams of the members of the Commercial Group are collectively involved in more than 50 rate and policy proceedings and working groups in more than 20 states. The managerial and technical staffs of the members of the Commercial Group that are dedicated to working on these cases include over seven full time employees who have collectively more than 71 years of experience in the energy industry, including cost of service and rate design. In other states, individual members of the Commercial Group have experience working productively with the Consumer Advocate, providing information and assistance when needed and its participation in this case would complement that of the Consumer Advocate.

11. The extent to which the applicant's participation will broaden the issues or delay the proceeding. The Commercial Group's participation in this proceeding will not broaden the issues nor cause any delay in processing the case. Instead, the Commercial Group will focus its participation in this case on how the proposed rate increase will impact the facilities of the Commercial Group's members, as well as the impact that would result from the proposed changes to rate design and cost of service. In fact, the Commercial Group's presentation of the impact of the proposed increase on different commercial customers may actually streamline the Commission's review of HECO's proposed cost of service and rate design adjustments by identifying and proposing solutions to identified flaws. For a number of reasons, it is in the

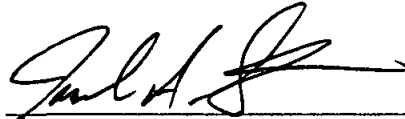
interest of the Commercial Group for this proceeding to be litigated and resolved in an expedient and efficient manner.

12. The extent to which the applicant's interest in the proceeding differs from that of the general public. The Commercial Group's interests in this docket differs from that of the general public in that it is comprised of several large commercial customers with extensive experience in the regulated and deregulated part of the energy industry, and with multiple retail establishments within HECO's service territory. The Commercial Group appreciates the service that the Consumer Advocate provides to represent the general public of HECO's territory. However, for the reasons discussed in paragraph 9, circumstances of some dockets make it difficult for the Consumer Advocate to simultaneously represent large commercial customers and all other members of the general public, each of which has their own class and different cost of service scenarios.

13. Whether the applicant's position is in support of or in opposition to the relief sought. Generally, the Commercial Group opposes the relief sought by HECO, inasmuch as the proposed level of increase, distribution to the various customer classes, and the design of rates will adversely impact the Commercial Group's operations.

WHEREFORE, the Commercial Group requests an order granting its Motion to Intervene and Become a Party hereto with the right to have notice of, and appear at the taking of testimony, produce and cross examine witnesses, and be heard in person or by counsel, upon brief and at oral argument, if oral argument is granted, and to otherwise be granted full party status herein.

DATED: Honolulu, Hawaii, September 29, 2008.



Joseph Stewart, Bar No. 7315

and

Holly Rachel Smith⁷

Attorneys for the Hawaii Commercial Energy
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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2008, copies of the foregoing document
were duly served on the following party, in the manner indicated:

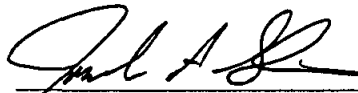
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